and it seems to me that my answer to the question propounded in this Motion must depend upon the proper construction of section 20.

In construing that section full value must be given to every word, and if upon a strict construction the Society feel that it does not give them all the protection by way of lien, which they consider it was intended to give them, their remedy lies in seeking some amending legislation. As the section now stands, it creates a lien in respect of 'any debt due' from the member. Those words must be taken to mean what they say, and their meaning has been considered in a number of English cases. The phrase occurs in section 18 of the Bankruptcy Act 1883, and has been held to mean all claims to which a debtor is liable, and which are provable in his bankruptcy (*Flint* v. *Barnard*, 22 Q.B.D. 90). That would not cover a contingent liability such as the one under consideration here. Even the words 'debts due or growing due' in section 44 of that Act do not include a claim which is not yet a debt but may become a debt (*per* Russell C. J. in *Wilmot* v. *Alton*, 1896, 2 Q.B. 254). In *Re European Life Assurance Society*, 39, L.J. Ch. 324, James V. C. observed that a debt is due when it is payable, but perhaps the case most in point is *In re Stockton Malleable Iron Company*, 2 Ch. D. 101, where by Article 7 of the Company's articles of association it was provided that the Company should have a first and paramount lien upon all shares of any member for any moneys due to the Company from him alone or jointly with any other person with power to sell and apply the proceeds in or towards the discharge of 'such debts.' In his judgment Jessel M. R. observed that the case appeared very plain. The argument addressed to him on the 7th Article was that 'moneys due' included moneys owing but not at present payable. He held that the word 'due' in the article must mean 'presently payable.' That really disposes of the question raised by this Motion, and it accordingly seems to me that the Official Assignee is right in his contention, and that 'any debts due' means any debts presently due and payable, and cannot go so far as to include a contingent liability, which may in fact never materialise into a debt at all. If it had been intended to include such a liability, it would have been a simple matter to add the words 'and in respect of any contingent liability of such member.' What the Society are, in effect, seeking to do is to read some such words into the section, and that in my opinion cannot be done until such words are added.

It follows then that the Society have no lien upon this sum of $36 in respect of the debtor's liability as surety, and that as against him they are not entitled to retain the money. As the debtor has given his written consent to the money being paid over to the Official Assignee for the benefit of the general body of his creditors, no question arises as to the respective rights of the Official Assignee and the debtor *inter se*. That point was not raised or argued before me, but Mr. Navaratnam in reply to a question by me stated that when a member becomes bankrupt, the Society ordinarily pays over the amount standing to his credit to him and not to the Official Assignee, except with the consent of the debtor. I think that the Society are right in so doing, as section 21 of the Co-operative Societies Enactment specifically creates an exception to the general rule that all the property of a bankrupt vests in the Official Assignee on bankruptcy. That section reads:—

> "Subject to the provisions of section 20 the share or interest of a member in the capital of a registered society shall not be liable to attachment or sale under any decree or order of a Court in respect of any debt or liability incurred by such Member, and the Official Assignee under the law relating to bankruptcy for the time being in force shall not be entitled to or have any claim on such share or interest."

I accordingly direct that the Society are not entitled to retain the debtor's credit balance and that, the debtor having consented to its being paid over to the Official Assignee, the latter is entitled to have it paid over to him. I would add that in my opinion the attitude taken up by the Society in this matter has been entirely reasonable, and that they acted properly in not paying the money over until they had obtained the directions of the Court.

Order Accordingly.

[APPELLATE CIVIL JURISDICTION]

TERRELL, Ag. C.J. (S.S.),

WHITLEY, Ag. C.J. (F.M.S.) & CUSSEN, J.

December 10, 1937.

HO KIM HOI.....Appellant.

v.

THE ANGLO-AMERICAN CORPORATION LIMITED.....Respondent.

[SELANGOR CIVIL APPEAL No. 3 of 1937]

Companies—memorandum share—termination of holder's services—cancellation of allotment—illegality of—liability of holder.

The appellant who had subscribed his name to the Memorandum and Articles of the Respondent Company and agreed to take one share value $1,000, was appointed sales director of the Company at a salary of $400 per mensem. The employment, which was for three years, was liable to be determined by a three months' notice on either side. On the 19th of August 1935 the directors of the Company passed a resolution purporting to cancel the appellant's memorandum share. In September 1935

the Company gave the appellant three months' notice to terminate his employment as sales director. On the 4th of October 1935 an agreement (Exhibit C) was executed between the Company and the appellant dispensing with the three months' notice and releasing each other from all claims. The directors, having been advised that the cancellation of the allotment of the appellant's memorandum share was illegal, treated such cancellation as a nullity, and resolved to demand payment of the $1,000 from the appellant. On the same day the Secretary of the Company wrote to the appellant demanding payment. The Company sued the appellant for the $1,000 and the trial Judge held that he was liable.

Held, on appeal, that the resolution of the 19th August 1935 was *ultra vires* and null and void.

Held also, that the only matters within the contemplation of the parties at the time that Exhibit C was executed were their mutual rights and obligations under that agreement and that as there was nothing in the circumstances of the case from which it could be inferred that the parties had intended a release of the liability attached to the memorandum share, the appellant was liable.

TRIAL OF SUIT.

Briggs for the Appellant.

Ramani for the Respondent.

Cur. Ad. Vult.

TERRELL, AG. C.J. (S.S.)—The important dates are as follows:—

June 28th 1935. The appellant subscribed his name to the Memorandum and articles of the Company, and thereby agreed to take one share of $1,000.

July 1st 1935. The Company was incorporated.

July 9th 1935. The Company entered into an agreement with the appellant whereby he was appointed sales director at a salary of $440 p.m. The Agreement, which was for three years, was liable to be determined by three months' notice on either side.

August 19th 1935. The Directors passed a resolution purporting to cancel the allotment of the appellant's Memorandum share.

September 30th 1935. The Company gave the appellant three months notice terminating his agreement.

October 4th 1935. The parties entered into a fresh agreement dispensing with the notice, and putting an end to the agreement as from the 30th September 1935, and releasing each other from all claims (Exhibit C).

October 24th 1935. The directors, having been advised that the cancellation of the allotment of the appellant's Memorandum share was illegal, treated such cancellation as a nullity, and resolved to demand payment of the $1,000 from the appellant.

On the same day the Company wrote to the appellant, demanding payment (Exhibit F).

After further correspondence the Company filed their plaint on the 30th November 1935.

The defence was (1) that the resolution of the 19th August extinguished the liability on the Memorandum share, and alternatively (2) that Exhibit C extinguished such liability.

There was also a counterclaim with which the Court of Appeal is not concerned.

On the 27th February 1937 judgment was given in favour of the Company for $1,000 and costs.

On the appeal it was not seriously contended that the resolution of the 19th August 1935 was of any effect, and the principal ground of appeal was that Exhibit C effectually released the appellant from any liability to pay for the Memorandum share if such liability was still subsisting.

Exhibit C (the agreement of the 4th October 1935) is as follows:—

> "THIS AGREEMENT made this 4th day of October, 1935, Between the Anglo-American Corporation Ltd. Kuala Lumpur (hereinafter called the party of the first part) of the one part and Ho Kim Hoi of Kuala Lumpur (hereinafter called the party of the second part) of the other part.
>
> WHEREAS the party of the first part is a Company incorporated in the Federated Malay States having its registered office in Kuala Lumpur.
>
> "AND WHEREAS the party of the second part on 8th July 1935, entered into a service agreement with the party of the first part wherein it was agreed *inter alia* that the said service agreement could be determined by either party giving three months notice.
>
> AND WHEREAS on 30th September, 1935, the party of the first part, by virtue of the provisions of the said service agreement gave three months' notice to the party of the second part erminating his services.
>
> NOW IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:—
>
> (1) The three months' notice required by the said service agreement shall be dispensed with and the services of the party of the second part shall be deemed to have ceased on 30th September 1935.
>
> (2) The parties hereto agree that they have no claim whatsoever against each other, and no claim of any nature shall be entertained by either party.

Mr. Briggs, on behalf of the appellant, put forward the following propositions:—

(1) that general words ordinarily have a general meaning.

(2) That the generality of the words in a release may be limited;
(a) by the exclusion of matters unknown to the parties and (b) by the exclusion of matters which would render the document nonsensical, or which are repugnant.
(3) Recitals *may* govern and control general words, but there is no rule that they invariably do so.

Mr. Briggs cited several cases which support the propositions quoted above, and I would only observe that it is dangerous to argue from the facts of one case to the facts of another.

The law is perhaps most clearly stated in the following words by Lord Westbury in *London & South Western Railway Company* v. *Blackmore*, L.R. 4 E & I Appeals, page 610 at page 623.

"The general words in a release are limited always to that thing or those things which were specially in the contemplation of the parties at the time when the release was given."

It will be found that the proposition laid down by Lord Westbury covers all the particular cases suggested by counsel and the result is that the scope of a release is a matter of intention. Such intention can be gathered:

(a) from the document itself, and
(b) from the circumstances and the knowledge of the parties at the time that the release was executed.

The first is an issue of law; the second an issue of fact. I might add that what the parties thought might in law be the effect of the release is quite irrelevant, although a certain amount of evidence with this end in view was led and apparently not objected to.

Now on the construction of Exhibit C it will be seen that,

(a) the recitals are confined to the service agreement and its termination by notice on the 30th September 1935.
(b) the operative part, first, dispenses with the 3 months' notice and provides for the termination of the agreement as from the 30th September 1935 and, secondly, comprises a release of all claims of any nature by one party against the other.

Prima facie therefore, and looking at the agreement alone, the only matters in contemplation of the parties were their mutual rights and obligations under Exhibit C.

Looking at the surrounding circumstances the following facts emerge:—

(1) The appellant knew that originally he was under liability to pay $1,000 for his share. After the 19th August 1935 he thought that his liability had been extinguished. He alleges that he knew before the 4th October that there was some doubt as to the validity of the resolution of the 19th August 1935, but his subsequent conduct is quite inconsistent with any such allegation.
(2) The appellant was partly, if not wholly, responsible for the instructions given to Messrs. Chandran & Bok, his solicitors at the trial, for the preparation of Exhibit C. If the release was intended to cover his liability on the Memorandum share, it is extraordinary that it was not referred to in the recitals.
(3) On the 30th October 1935 Messrs. Chandran & Bok replied to the Company's letter of demand of the 24th October. They relied solely on the resolution of the 19th August 1935. On the 5th November 1935 the Company's solicitors wrote again pointing out that the resolution of the 19th August 1935 was *ultra vires*, and void. On the 6th November 1935 the appellant's solicitors had his copy of Exhibit C stamped and on the same day wrote to say that they rely on the release. If, as the appellant alleges. the liability in respect of his Memorandum share was in the contemplation of the parties, it is remarkable that it took him over a month to recollect it.
(4) The learned trial Judge has found as a fact that the question of the Memorandum share was not in the contemplation of the parties. An Appellate Court would in any case be unwilling to disturb such a finding, and on the facts of the present case it is difficult to see how any other conclusion was possible.

In accordance therefore with the principles enunciated above the release must be held to exclude any liability in respect of the Memorandum share.

I would therefore dismiss the appeal with costs.

WHITLEY, AG. C.J.—In my opinion the judgment appealed against was clearly right. The appellant was a subscriber to the memorandum of association of the respondent Company, and agreed to take one share value $1,000 in the capital of the Company. He admittedly has not paid for his share. The Company sued him for the $1,000 and the learned trial Judge held that he was liable.

There were two grounds of appeal. The first was that the appellant's liability was extinguished by virtue of a resolution passed by the Board of Directors on the 19th August 1935. The relevant minute reads as follows:—

"*CANCELLATION OF ALLOTMENT*, It was resolved that the allotment of one share to Mr. Ho Kim Hoi, on July 8th 1935, be cancelled, as he had procured his qualifying share by transfer from Mr. W. H. Barrett."

If the Directors had the power to bind the Company by that resolution, it would of course dispose of this case, and be a complete answer to the claim; but it seems clear from the authorities that they had no such power. The position of a person who subscribes to the memorandum of a company is in a position totally different from that of the share-holders. He becomes a member *ipso facto* on the incorporation of the Company and liable as the holder of whatever number of shares he has subscribed for. "The original subscribers" as Lord Cairns said in *Evan's case*, L.R. 2 Ch. App. 430 "are deemed to have taken the shares set opposite their names" the object being that the public might rely with confidence on the subscribers of the memorandum becoming members of the Company. In their case accordingly no allotment is necessary (*Re London and Provincial Consolidated Coal Co.*, 5 Ch. D. 525) from which it follows that a cancellation of allotment, such as that which the Board purported to effect by their resolution, is void and a nullity. The appellant by reason of his having subscribed is a member irrespective of any allotment, so that cancellation of allotment cannot affect his position in any way. He is bound to take the share from the Company, and to pay for it on calls duly made, and he cannot in satisfaction of this obligation take a transfer of a fully paid share from another member; the only way he can possibly evade liability is by showing that all the shares have been allotted to others. [*Alexander* v. *Automatic Telephone Co.*, (1900) 2 Ch. 63; *Mackey's* case, 1 Ch. D. 247.]

In October 1935 Mr. Ward Jackson, a member of the Board of Directors, gave it as his opinion that the cancellation was invalid in as much as in law each subscriber to the memorandum irrevocably agrees to take from the Company and pay either in cash or money's worth, for the share or shares placed opposite his signature, and at a Board meeting held on the 24th October 1935, it was resolved that the appellant be asked to pay the $1,000 due from him for his share. In my opinion the view taken by the Board and Mr. Ward Jackson was correct, and the cancellation on 19th August 1935, did not in any way affect the appellant's liability.

The second and more substantial ground of appeal was based upon an agreement of release made between the appellant and the Company under the following circumstances. The appellant was employed by the Company as sales director under an agreement dated the 8th July 1935 whereby it was provided that the appellant should receive a salary of $400 per month, and an allowance of $40 per month, and that either party might give three months notice in writing to terminate the agreement. On the 30th September 1935 the Company wrote giving the appellant three months notice. On the 4th October 1935 the appellant and the Company entered into an agreement of release of which the recitals and operative parts read as follows:—

"WHEREAS the party of the second part on 8th July 1935 entered into a service agreement with the party of the first part wherein it was agreed *inter alia* that the said service agreement could be determined by either party giving three months notice.

AND WHEREAS on the 30th September 1935 the party of the first part, by virtue of the provisions of the said service agreement gave three months notice to the party of the second part terminating his services.

NOW IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:—

(1) The three months notice required by the said service agreement shall be dispensed with and the services of the party of the second part shall be deemed to have ceased on 30th September 1935.

(2) The parties hereto agree that they have no claim whatsoever against each other, and no claim of any nature shall be entertained by either party after the execution of these presents."

Taking that document as it stands there is nothing to suggest that the parties had in mind anything beyond the appellant's agreement of service and their respective rights and liabilities under that agreement, but Mr. Briggs for the appellant relied upon a long line of cases as establishing that the general words in the operative part of a release are not necessarily restricted in scope by the recitals, and that where it is clear from evidence of the surrounding circumstances that the parties to a release had in mind something further than the matters set out in the recitals, the general words will be given a correspondingly extended meaning. I agree that that is substantially the effect of the decision in the cases of *Hawkins* v. *Jackson*, 46 E.R. 1697, *Bissett* v. *Burgis*, 53 E.R. 109 *London & South Western Railway* v. *Blackmore*, L.R. 4 H.L. Cases, 610, and *In re Perkins*, (1898) 2 Ch. 182.

That being the law, the only question which the learned trial Judge had to decide on this part of the case was what was in the contemplation of the parties. He found as a fact that at the time of executing the release the parties had not the question of the appellant's memorandum

share in their minds. Mr. Briggs sought to show that he was wrong in so finding. He argued that the real effect of the release was that the Company agreed to forego any claim in respect of the $1,000 due in respect of this share in return for the appellant's agreeing to waive his right under the service agreement to $1,320 being three months salary and commission. It seems to me, however, that the weight of evidence and the balance of probabilities are all against this view. In the first place it has to be borne in mind that on the 4th October 1935, the date of the release, the parties were clearly under the impression that the appellant's liability in respect of this share had been finally extinguished by the resolution cancelling the allotment of the share. It was not until the 24th October that the legality of the cancellation was questioned and the appellant called upon to pay the $1,000. There was accordingly on the 4th October no reason why the question of liability for this money should have been in the mind of the parties. Then again if it really had been intended that the document should *inter alia* release the appellant from this liability, why does it contain no reference to the share? This is not the case of a home-made agreement drawn up by ignorant natives. The parties were experienced men of affairs, and the document was prepared by the solicitor, who subsequently acted for him. It seems inconceivable that they should either have inadvertently overlooked or deliberately omitted making any reference to what would have been one of the most important matters covered by the release. Finally, the attitude taken up by the appellant when he received the Company's letter of the 24th October requesting payment of the $1,000 is so definite and significant as to be in itself sufficient justification for the finding of the trial Judge. If the appellant is correct in his statement as to what was intended and contemplated by the parties to the release, that document constituted a complete answer to the Company's claim, and the obvious reply would have been some reference to the agreement of release. One would have expected a display of righteous indignation at the Company having the effrontery to put forward such a claim, when that was the very claim which, less than three weeks back, they had agreed to waive and abandon. Yet, we find that his solicitors, replying on his instructions on the 30th October, make no mention of the release. True they express surprise at the claim, but the reason which they give is that the share had been cancelled by the resolution of the Directors.

I would dismiss the appeal with costs.

CUSSEN, J.—In Civil Suit No. 256 of 1935 the Anglo-American Corporation Limited sued Ho Kim Hoi, and obtained judgment in its favour.

From that judgment Ho Kim Hoi now appeals.

The Plaintiff Company was registered and incorporated on 1st July, 1935. The Defendant was a subscriber to the Memorandum of Association on 28th June and as such agreed to take one share in the capital of the Company of value $1,000. He also became a Director of the Company.

On 8th July, 1935, an agreement was made between the Company and the Defendant whereby the Defendant was employed by the Company as a "Sales Director" at a salary of $400 per mensem. The agreement was for a term of three years subject to determination by either party by three months notice.

On 2nd August, 1935, the Defendant obtained by transfer from one Barrett one share in the Company of $1,000. Thereupon, as he was not prepared to take up a second share, the Defendant so informed the Directors, and on 19th August the Directors by resolution purported to cancel the allotment of the share for which the defendant has subscribed the Memorandum of Association.

The resolution was in these terms:—

> "Cancellation of allotment. It was resolved that the allotment of one share to Mr. Ho Kim Hoi on July 8th 1935 be cancelled as he had procured his qualifying share by transfer from Mr. W. H. Barrett."

The affairs of the company did not prosper and by the end of September it was in a very bad way.

In consequence on 30th September the Company gave the Defendant three months notice to terminate his employment as "Sales Director."

Similar notices were given at the same time to all the employees of the Company.

Mr. Stratton Brown, who previously was the Office Manager of the Company—so appointed on 9th September —, became, on 1st October, the Managing Director in succession to Mr. Ward Jackson. And on 4th October an agreement was executed between the Company and the Defendant by which the Company and the Defendant mutually released each other from the obligation of the three months' notice.

This agreement which is Exhibit C recites the two parties, the service agreement of 8th July with the clause providing for termination by three months notice, the fact that on 30th September the Company exercised this right and gave notice to the Defendant, and then this agreement proceeds as follows:—

> "Now it is hereby mutually agreed as follows:—
>
> (1) The three months' notice required by the said service agreement shall be dispensed with and the services of the party of the second part shall be deemed to have ceased on 30th September, 1935.

(2) The parties hereto agree that they have no claim whatsoever against each other, and no claim of any nature shall be entertained by either party after the execution of these presents."

This agreeement is signed by Mr. Stratton Brown as Managing Director of the Company.

The next documentary record of importance is an extract from the minutes of a Board meeting of the Directors held on 24th October at which Mr. Lee Kor That drew the attention of the Board to the cancellation by the resolution of 19th August of the Memorandum share of the Defendant and informed the Board, that, according to the legal opinion, that cancellation was illegal.

It was thereupon resolved that the Defendant be asked to pay the $1,000 due for the share.

And on the same date, i.e. 24th October, the Secretary of the Company wrote to the Defendant asking for payment of the $1,000 (Exhibit F).

On 30th October the Defendant replied through his solicitors—Messrs. Chandran and Bok—to the effect that the share subscribed for had been cancelled by the resolution of 19-8-35 (Exhibit G).

I may here point out that the Defendant had resigned from the Board of Directors on 1st October.

On 5th November the Company's solicitors —Messrs. Shook Lin and Ramani—replied to Exhibit G pointing out that the resolution of 19-8-35 was *ultra vires* and void (Exhibit N).

On 6th November Messrs. Chandran and Bok replied to Exhibit N drawing attention to the agreement of 4th October.

The Plaint was filed on 30th November.

The suit was heard before Pedlow, J. on 3rd December 1936 and on 26th and 27th February 1937.

At the conclusion of the hearing on 27th February judgment was given for the Plaintiff.

Besides the documentary evidence certain oral evidence was given—for the Plaintiff that of Mr. Stratton Brown and of Lee Kor That, and for the Defendant the Defendant himself and Mr. Ward Jackson.

The evidence of Mr. Stratton Brown had been taken *de bene esse* on 28-4-36; the counsel for the Plaintiff and Defendant being the same as at the subsequent hearing.

The learned Trial Judge found—

(1) That the cancellation on 19-8-35 of the Memorandum Share subscribed for by Defendant was *ultra vires* and invalid;

(2) That the true construction of the agreement of 4th October—Exhibit C —is that it does not include the question of the Defendant's Memorandum Share which is not referred to in the preamble. The parties had not the question of the Memorandum Share in their minds when Exhibit C was executed.

The Appellant appeals against both these findings.

As regards the first of these findings it was argued for the Appellant that the resolution of 19-8-35 cancelling the allotment of one share (i.e. the Memorandum Share) to the Defendant was valid as between the Company and the Defendant, although admittedly invalid as against the creditors in the event of liquidation.

I cannot accept this proposition. In my opinion the Company had no power to cancel a share subscribed for in the Memorandum of Association.

The second finding of the learned Trial Judge is a finding of fact. It is a decision as to the intention of the parties when the agreement, Exhibit C, was made, a finding as to what was and was not in the contemplation of the parties at the time.

Now this agreement, in form a release, is of course a contract, and as in the case of all contracts the object of the Court is to determine what the parties intended and meant to effect in making this contract. But the Court in so doing must do so within the rules and restrictions of the Law of Evidence applicable to written contracts.

In this case apart from the agreement itself certain other evidence, documentary and oral, was before the learned Trial Judge which related to this question of the intention of the parties. As regards the oral evidence, for the Defendant there was the Defendant himself and Mr. Ward Jackson; for the Plaintiff there was Mr. Stratton Brown. No objection appears to have been taken at the trial to any part of this oral evidence and certainly at the appeal none was made.

The evidence of the defendant and Mr. Ward Jackson was clearly to the effect that the question of the Memorandum of Association was foremost in the minds of the parties when the agreement, Exhibit C, was made.

As regards the evidence of Mr. Stratton Brown there is no direct reference to the question of the Memorandum Share; he is silent on that matter; but it was never put to him in cross-examination by counsel for the Defendant; and, I think, it must be taken that if it had been he would have denied that the question of the share had anything to do with the execution of the agreement, Exhibit C. That is also clearly manifest from the actual account he gives of the execution of Exhibit C.

As between these witnesses it must be taken that the learned Trial Judge accepted the evidence of Mr. Stratton Brown.

But, in my opinion, the surrounding circumstances, the chronology of the events, and the other documentary evidence (apart from Exhibit C itself) all tend to support this finding of the learned Trial Judge.

And again examination of the agreement itself certainly *prima facie* creates the impression that there was in the contemplation of the parties nothing except the Service Agreement and possible matters arising from it.

I am therefore of opinion that on all the evidence given before him there was ample material to support this finding of fact by the learned Trial Judge.

Much of the argument for the Appellant was devoted to the proper construction of the agreement itself and in particular to the effect of the recitals in controlling the general operative words in the agreement. Many cases were cited on this question. They are:—

Payler v. *Homersham* (1815).
Lampson v. *Corke* (1822).
Collier v. *Squire* (1827).
Lindo v. *Lindo* (1839).
Hawkins v. *Jackson* (1850).
Bisset v. *Burgess* (1856).
Lyall v. *Edwards* (1861).
Jenner v. *Jenner* (1866).
London & South Western Railway v. *Blackmore* (1870).
Turner v. *Turner* (1880).
Danly v. *Couts* (1885).
Exparte Dawes (1886).
In Re Perkins (1898).

I have examined these cases with great care. These cases are all determined—however arrived at—whether from construction of the instrument alone or together with other relevant evidence—they are all determined by a finding as to what the intention of the parties was in executing the particular instrument.

In my opinion this appeal should be dismissed with costs.

Application dismissed.

——:o:——

JOHORE REPORT

[ORIGINAL CIVIL JURISDICTION]

MILLS, J.

December 12, 1937.

S. L. S. L. LETCHUMANAN CHETTY .....**Plaintiff.**

v.

HAN HIU FONG.....**Defendant.**

[MUAR CIVIL SUIT No. 20 of 1937]

The Land Enactment, 1910, Schedule P. (Section 62)—Charge—Payment of interest after due date—Interest by way of damages—The Usurious Loans Enactment, S.3 (vii).

By a Charge made in statutory form on the 18th September 1931, the defendant covenanted to pay the plaintiff a certain sum of money, together with interest at a specified rate, on the 18th September 1932. He charged his land with such principal and interest "for the better securing to the said Chargee the payment in manner aforesaid of the principal sum and interest." There was no covenant to pay interest, in default of payment of principal, after 18th September 1932.

Held, following *K. Arumugam* v. *J. K. R. Leonard*, 5 M.L.J. 252, that interest was not payable after the date specified in the charge for repayment of the principal, but that on a proper construction of Section 73 of the F.M.S. Contract Enactment, in the light of illustration (n), interest is payable as damages for withholding payment of the principal beyond the agreed date.

Held also, that in determining the rate of interest to be paid as damages, regard should be had to the provisions of Section 3 (vii) of the Usurious Loans Enactment.

TRIAL OF SUIT.

The facts appear from the judgment below.

Mitra for the Plaintiff.

Cameron for the Defendant.

Cur. Ad. Vult.

MILLS, J.—On the 18th September, 1931, the defendant borrowed the sum of $4,000 from the plaintiff: the defendant contracted to repay that sum on the 18th September, 1932, and to pay interest at the rate of $18 by the $100 in the year, by equal instalments of $60 on the 18th day of every month. For the better securing to the plaintiff the payment in manner aforesaid of the principal sum and interest, the defendant charged the land comprised in Johore Grant No. 6985. A copy of the charge is attached to this judgment. The defendant has not repaid any of the principal and has paid only $340 as interest.

In the present suit, the plaintiff prays judgment for

(a) the principal sum of $4,000,

(b) $380, being interest due and unpaid up to the 18th September, 1932,